

REMARKS

Reconsideration of the application is respectfully requested for the following reasons:

1. Rejection of claims 1-22 under 35 U.S.C. § 112, first paragraph

Claims 1-22 stand rejected under 35 U.S.C. § 112, first paragraph by being based on a disclosure which is not enabling. Applicants submit amended claim 1 which recites a method for trapping insects with an insect trap recited therein. Therefore, the inclusion of the trap in the claim provides an environment in which to implement the method of the invention. Accordingly, Applicants assert that amended claim 1 overcomes this rejection.

Applicants traverse the rejection of claim 15 for failing to recite the structure of a trap. Applicants would like to point out that claim 15 recites a pesticidal composition and is not directed to an insect trap. It follows that it would not be appropriate to recite an insect trap in a claim that is a novel composition. Applicants therefore submit that claim 15 complies with 35 U.S.C. § 112, first paragraph. Accordingly, Applicants respectfully request the Examiner to reconsider this rejection in view of the nature of the subject matter contained in claim 15.

Applicants submit herewith new claim 30 which recites a method for killing or controlling insects. The novelty of this method is the coating of a surface with a composition comprising magnetic particles and an agent which is either a pesticide or behavior modifying chemicals. It is not essential to the method to include an insect trap, and instead only a surface is required to execute this method. Applicants assert that claim 30 complies with 35 U.S.C. § 112, first paragraph.

2. Rejection of claims 1-14 under 35 U.S.C. § 112, first paragraph

Claims 1-14 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to clearly claim the subject matter of the present invention. Claim 1 also stands rejected under 35 U.S.C. § 101. Of particular note, one of the grounds for these rejections was based on the failure of the claims to positively recite the steps of the method of claim 1. As noted above, claim 1 was amended and now positively recites the step of coating a zone of or within the housing with a composition comprising magnetic particles. Applicants submit that amended claim 1 complies with 35 U.S.C. § 112, second paragraph and 35 U.S.C. § 101, and respectfully request withdrawal of these rejections.

Claim 1 was also rejected under 35 U.S.C. § 112, second paragraph for failing to distinctly claim the subject matter contained therein. Specifically, claim 1 originally contained phrases including "such as" and "containing or consisting of". Such phrases have been removed from claim 1 and accordingly, withdrawal of this rejection is requested.

3. Rejection of Claims 1-19 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,771,628 (Nobbs) in view of U.S. Patent 6,041,543 (Howse)

Claims 1-19 stand rejected as being unpatentable over Nobbs in view of Howse. For the reasons put forth below, Applicants respectfully traverse this rejection by asserting that Nobbs and Howse, whether considered independently or collectively, are deficient in disclosing or suggesting the basic claimed method of claim 1 and the compositions of claims 15 and 17. Further, claims 2-14, 16 and 18-19 which directly or indirectly depend from either claim 1 or claim 17, are also patentable over Nobbs and Howse based in significant part on their individually recited steps or elements and the distinction of claims 1 and 17 therefrom enumerated below.

a. Invention Distinguished

The present invention, as recited in claim 1, relates to a method of trapping insects with an insect trap having a housing defining an entrance and a trapping area disposed below the entrance. The method is executed on the principle that insects possess a magnetic field. The method comprises the step of:

coating a zone of or within the housing with a composition comprising magnetic particles, whereby an insect in contact with the composition becomes at least partially coated with the composition and is destabilized, thereby falling into the trapping area.

The present invention, as recited in claim 15, continues with the magnetic field concept by reciting a pesticidal composition in particulate form that comprises composite particles that include a core of an inert substance having pesticide or behavior modifying chemical impregnated thereon associated therewith and the core being impregnated or coated with a magnetic material.

Further, the present invention, as recited in claim 17, relates to a pesticidal composition in particulate form including particles comprising a magnetic material in admixture with a pesticide or behavior modifying chemical or particles of a magnetic material coated with a pesticide or behavior modifying chemical.

b. References Distinguished

Nobbs discloses an insect trap that includes a housing having a plurality of curved sections adjacent to each of the walls thereof and a trap plate positioned over the housing. An attractant is positioned so that insects must traverse at the curved surface to reach the attractant. The curved surfaces are coated with an electrostatically charged powder whereby the electrostatically charged powder is transferred to the insects which traverse the trap plate and fall into the housing. The

trap of Nobbs is distinguished from the method of trapping insects of the present invention on the basis of a several important particulars.

Nobbs teaches a device for trapping insects using an electrostatically charged material while the present invention employs a composition including particles comprising magnetic material. In the Office Action, it is broadly and erroneously asserted that a composition composed of a magnetic material is the functional equivalent of a composition comprised of an electrostatically charged material and that one of ordinary skill in the art would have found it obvious to substitute a magnetic material with an electrostatically charged material. Applicants submit that it is not a mere design choice to replace electrically charged particles in a pest trap or method of trapping pest with a magnetic material. Nowhere in the cited references is there a disclosure or suggestion that would motivate one skilled in the art to make such a replacement.

Pursuant to MPEP § 2144.06, in order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on Applicants' disclosure or the mere fact that the components are functional or mechanical equivalents. The Examiner has not cited any references teaching that an electrostatically charged material is the functional equivalent of a magnetic material. To the extent that the Examiner is relying on "well known art", Applicants respectfully request the Examiner to identify such well known art pursuant to MPEP § 2144.03. Applicants are unable to assess the teachings of art until it is identified.

An example of the difference between the electrostatically charged material in references such as Nobbs from the present invention is as follows. Powders such as talc (magnesium silicate) or other fine particles, as discussed in Nobbs, do not possess an electrical charge by themselves and are instead temporarily charged before use in a trap, for example by friction. The electrostatically charged material

attracts to oppositely charged material. Magnetic particles, on the other hand, are permanently magnetised and attract to oppositely polarized material.

The use of magnetic particles in the pest trap of the present invention has particular advantages over pest traps using electrostatically charged powders. In particular, electrostatically charged powders have been found to lose their charge rapidly in conditions of high humidity and when moisture films develop. Furthermore, electrostatically charged particles have a tendency to be removed from pest traps by wind currents or by shaking since they are loosely deposited in the pest trap. Conversely, the magnetic particles used in the present invention have been found impervious by moisture or humidity and which, when anchored on a conducting or magnetic surface (which is generally not possible with electrostatic particles), will remain in position for long periods.

In regards to claims 15 and 17, while it is true that Howse mentions the use of pesticides and behavior modifying chemicals in association with electrostatically charged particles, Howse fails to make up for the shortcomings of the teachings of Nobbs. Specifically, Howse fails for the same reasons as Nobbs, namely Howse fails to disclose or suggest a pest trap or method for trapping insects using magnetic particles. Applicants submit that one skilled in the art of pest traps and compositions would not be motivated to replace the electrostatically charged particles of Nobbs or Howse with the magnetic particles of the present invention.

Accordingly, in view of the aforesaid observations, it is submitted that Nobbs and Howse, whether considered independently or collectively, fail to disclose or suggest a pest trap or method for trapping insects using magnetic particles of the present invention. Therefore, Applicants request withdrawal of the rejection.

4. Rejection of Claims 23-28 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 5,162,014 (Moore et al.)

Claims 23-28 stand rejected as being unpatentable over Moore et al. For the reasons put forth below, Applicants respectfully traverse this rejection by asserting that Moore does not disclose or suggest the basic claimed trap of claim 23. Further, claims 24-28, which directly or indirectly depend from claim 23, are also patentable over Moore et al. based in significant part on their individually recited elements and the distinction of claim 23 therefrom enumerated below.

a. Invention Distinguished

Claim 23 relates to an insect trap comprising a housing wherein a zone of the housing or a zone within the housing includes a magnetically polarized material and the zone is coated with a composition including particles comprising a magnetic material of opposite polarity to that of the magnetically polarized material.

b. Reference Distinguished

In Moore et al., a magnetic tape is used as a simple means of providing a magnetic field within a beehive, where the field is strong enough to debilitate bee mites. As a consequence, there are no freely disposed magnetic particles, as in the insect trap of the present invention.

The tape in Moore et al. is formed of barium ferrite in a polymer binder and the particles are not free to contact either the bees or the mites. On the contrary, the insect trap of claim 23 is configured so that the magnetic particles are arranged to adhere to the insects to thereby debilitate them. Therefore, the magnetic tape of Moore et al. cannot be construed an insect trap as in the present invention.

Moore et al. tends to teach away from the idea that the magnetic tape is an insect trap. Specifically, the arrangement disclosed in Moore et al. is such that the bee mites are already in the beehive in which the magnetic tape is disposed. In the present invention, conversely, the insect trap includes a particular arrangement with a zone of a magnetically polarized material coated with a magnetic material of

opposite polarity to the magnetically polarized material. There is no such disclosure or suggestion in Moore et al. of the particular arrangement of the present invention.

Accordingly, in view of the failure of Moore et al. to disclose or suggest an insect trap that has a zone of or within the housing that includes a magnetically polarized material in which the zone is coated with a composition including particles comprising a magnetic material of opposite polarity to that of the magnetically polarized material, Applicants respectfully request withdrawal of this rejection.

5. Conclusion

In view of the amended claims and foregoing remarks, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that claims 1-31 be allowed and the application be passed to issue.

If any issues remain that may be resolved by a telephone or facsimile communication with the Applicants' Attorney, the Examiner is invited to contact the undersigned at the numbers shown below.

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Respectfully submitted,



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